United States Department of Labor
Employees' Compensation Appeals Board

P.F., Appellant	)	
and	)	**Docket No. 17-1964**
	)	**Issued: April 2, 2018**
DEPARTMENT OF VETERANS AFFAIRS, SOUTHERN NEVADA HEALTHCARE SYSTEM, Las Vegas, NV, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 21, 2017 appellant, through counsel, filed a timely appeal from an August 31, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has more than two percent permanent impairment of each upper extremity for which she previously received a schedule award.

FACTUAL HISTORY

On May 28, 2016 appellant, then a 61-year-old program support assistant, filed an occupational disease claim (Form CA-2) alleging that she sustained carpal tunnel syndrome causally related to factors of her federal employment. OWCP accepted the claim for bilateral carpal tunnel syndrome.[3]

A July 31, 2007 electromyogram (EMG) and nerve conduction velocity (NCV) study showed mild-to-moderate left carpal tunnel syndrome and mild right carpal tunnel syndrome. It indicated that appellant had prolonged median motor distal latency at 4.9 milliseconds on the left and normal median motor latency on the right, and prolonged median sensory distal latency on the left at 3.5 milliseconds and prolonged median sensory distal latency on the right of 3.3 milliseconds.

Dr. Bishr Hijazi, a Board-certified surgeon, performed a left carpal tunnel release on July 15, 2013 and a right carpal tunnel release on May 9, 2014. OWCP paid appellant wage-loss compensation until June 27, 2014.[4] Appellant retired from the employing establishment on July 11, 2014.

In a June 11, 2014 progress report, Dr. Hijazi noted that appellant had no further right hand pain or paresthesia, but experienced intermittent pain and paresthesia in the ulnar digits of the left hand. On examination he found normal sensation of the right hand at the median and ulnar nerve distribution and normal range of motion of the fingers. Dr. Hijazi found normal gross sensation of the ulnar digits of the left hand. He diagnosed status post right carpal tunnel syndrome "with resolved acute median nerve compression symptoms" and early left cubital tunnel syndrome.

On May 7, 2015 Dr. Hijazi advised that appellant had obtained maximum medical improvement.

Appellant, on May 26, 2015, filed a claim for a schedule award (Form CA-7). By letter dated June 16, 2015, OWCP requested that she submit an impairment evaluation from her attending physician addressing the extent of any permanent impairment due to her accepted

[3] OWCP previously accepted appellant's June 2007 occupational disease claim for bilateral carpal tunnel syndrome under OWCP File No. xxxxxx002.

[4] In an October 9, 2014 decision, OWCP denied appellant's claim for wage-loss compensation from June 10 to 27, 2014. By decision dated July 1, 2015, an OWCP hearing representative reversed the October 9, 2014 decision and instructed OWCP to pay her wage-loss compensation from July 11 to 27, 2014. She noted that appellant worked on July 9 and 10, 2014.

employment injury using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[5]

By decision dated November 16, 2015, OWCP denied appellant's schedule award claim. It found that she had not submitted an impairment evaluation as requested.

On November 25, 2015 appellant, through counsel, requested a telephone hearing before an OWCP hearing representative.

In a May 11, 2016 impairment evaluation, Dr. Mesfin Seyoum, who specializes in family medicine, reviewed appellant's history of carpal tunnel syndrome due to repetitive work duties treated with bilateral carpal tunnel releases. He noted that she currently experienced tingling and numbness in her wrists and hands, pain that she rated as level 2 out of 10, nighttime awakening, and difficulty with the activities of daily living. Dr. Seyoum indicated that appellant had a *Quick*DASH (Disabilities of the Arm, Shoulder, and Hand) score of 41. On examination he found a positive Tinel's sign and Phalen's test of the hands and wrists bilaterally, with full range of wrist motion and mild tenderness. Dr. Seyoum found reduced motor strength in the hands and "slightly decreased sensation in the distribution pattern of the median nerve in the hand, bilaterally." He noted that July 31, 2007 electrodiagnostic testing revealed mild-to-moderate left carpal tunnel syndrome and mild right carpal tunnel syndrome. Dr. Seyoum diagnosed employment-related bilateral carpal tunnel syndrome. Referencing Table 15-23 on page 449 of the A.M.A., *Guides*, for both the right and left side, he applied a grade modifier of 2 for test findings, a grade modifier of 2 for intermittent significant symptoms, and a grade modifier of 2 for reduced sensation in the left hand, which yielded an average grade modifier of 2 and a default impairment rating of five percent. Dr. Seyoum found that appellant's *Quick*DASH score did not alter the impairment rating, and concluded that she had five percent permanent impairment of the left upper extremity and five percent permanent impairment of the right upper extremity.

During the telephone hearing, held on July 13, 2016, OWCP's hearing representative noted that appellant had now submitted an impairment evaluation. She issued a summary decision on July 28, 2016 remanding the case for OWCP to refer the impairment evaluation to an OWCP medical adviser.

An OWCP medical adviser reviewed the evidence on August 17, 2016. He noted Dr. Seyoum's findings on physical examination differed from the July 11, 2014 findings by Dr. Hijazi, who noted normal sensation in the right hand postoperatively. The medical adviser recommended that OWCP refer appellant for a second opinion examination.

On August 31, 2016 OWCP referred appellant to Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated October 18, 2016, Dr. Swartz reviewed her history of bilateral carpal tunnel releases and discussed her current complaints of hand numbness at night and hand pain greater on the left side radiating into the forearms. On examination, he found a negative Durkin's test in the bilateral wrists and slight numbness in the base of the thumbs with Tinel's testing bilaterally. Dr. Swartz determined that appellant's Tinel's test was negative in the elbows and that she had minimal hypesthesias to

[5] A.M.A., *Guides*, 6th ed. 2009.

pinwheel testing in the right little finger. He measured strength and range of motion of the wrists. Dr. Swartz diagnosed status post bilateral surgery for carpal tunnel syndrome. Referencing Table 15-23 of the A.M.A., *Guides*, he found that the July 31, 2007 electrodiagnostic studies showed prolonged median sensory distal latency bilaterally and prolonged motor latency on the left, but not the right. Dr. Swartz applied a grade modifier of 0 for test results on the right, a grade modifier of 1 for a history of numbness at night, and a grade modifier of 1 for slight hypesthesias in the right little finger and right thumb numbness at the base, for an average grade modifier of 1. He applied the *Quick*DASH score of 40 and concluded that appellant had a grade modifier of 1 for mild carpal tunnel syndrome, which yielded two percent permanent impairment of the right upper extremity.

For the left side, Dr. Swartz applied a grade modifier of 2 for test findings of prolonged distal sensory and motor latency, a grade modifier of 1 for history, and a grade modifier of 0 for normal findings on examination, for an average grade modifier of 1. He found the default value of two percent unchanged after applying the *Quick*DASH score of 40, which yielded two percent permanent impairment of the left upper extremity.

An OWCP medical adviser reviewed the evidence on November 22, 2016 and concurred with Dr. Swartz' finding of two percent permanent impairment of the each upper extremity. He noted that the physical examination findings of Dr. Swartz corresponded to those found by appellant's attending physician.

By decision dated November 29, 2016, OWCP granted appellant a schedule award for two percent permanent impairment of each upper extremity. The period of the award ran for 87.36 days from October 18, 2016 to January 13, 2017.

On December 8, 2016 appellant, through counsel, requested a telephone hearing before an OWCP hearing representative. At the telephone hearing, held on June 19, 2017, counsel contended that Dr. Swartz used inaccurate grade modifiers and compared his application of grade modifiers with the grade modifiers found by Dr. Seyoum.

By decision dated August 31, 2017, OWCP's hearing representative affirmed the November 29, 2016 decision. She found that the opinion of Dr. Swartz constituted the weight of the evidence and established that appellant had no more than two percent permanent impairment of each upper extremity.

LEGAL PRECEDENT

The schedule award provisions of FECA,[6] and its implementing federal regulations,[7] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404.

the A.M.A., *Guides* as the uniform standard applicable to all claimants.[8] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[9]

The sixth edition requires identifying the impairment by Class of Diagnosis (CDX) condition, which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE), and Clinical Studies (GMCS).[10] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.[11] In Table 15-23, grade modifier levels (ranging from zero to four) are described for the categories of test findings, history, and physical findings. The grade modifiers are averaged to arrive at the appropriate overall grade modifier level and to identify a default rating value.

ANALYSIS

OWCP accepted that appellant sustained bilateral carpal tunnel syndrome causally related to factors of her federal employment. Dr. Hijazi performed a left carpal tunnel release on July 15, 2013 and a right carpal tunnel release on May 9, 2014.

An EMG and NCV study obtained on July 31, 2007 revealed mild-to-moderate left carpal tunnel syndrome and mild right carpal tunnel syndrome. The testing showed no axon loss, but a prolonged median motor distal latency on the left, normal median motor latency on the right, and prolonged median sensory distal latency bilaterally.

On June 11, 2014 Dr. Hijazi advised that found that appellant had normal sensation of the median and ulnar nerve distribution after surgery and normal range of motion. She related that she had no further right hand pain or paresthesia, but had some intermittent paresthesia and pain in the ulnar digits of the left hand.

In a May 11, 2016 impairment evaluation, Dr. Seyoum discussed appellant's bilateral complaints of pain, numbness, and tingling in her hands. He found a positive Tinel's sign and Phalen's test at the wrists bilaterally with some tenderness but no loss of motion. Dr. Seyoum further found a loss of sensation in the bilateral median nerve distribution. He reviewed the results of the July 31, 2007 EMG, which he advised showed mild-to-moderate left carpal tunnel syndrome and mild right carpal tunnel syndrome. Dr. Seyoum, using Table 15-23 on page 449 of the A.M.A., *Guides*, found a bilateral grade modifier of 2 for test findings, a bilateral grade modifier of 2 for history, and a bilateral grade modifier of 2 for physical findings, which yielded an average grade

[8] *Id*. at § 10.404(a).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5 (February 2013) *see also id.* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

[10] A.M.A., *Guides* at 494-531.

[11] *Id.* at 449, Table 15-23.

modifier of 2 and a default value of five percent. He found that the five percent bilateral impairment rating unaltered by appellant's *Quick*DASH score of 41. The Board notes, however, that a grade modifier of 2 for test findings is only appropriate when test results reveal a motor conduction block. Appellant's July 31, 2007 EMG and NCV did not show a motor conduction block on the right side, and thus she was not entitled to a grade modifier of 2 on the right side for test findings under Table 15-23. Dr. Seyoum's opinion, consequently, does not fully conform to the provisions of the A.M.A., *Guides*.[12]

An OWCP medical adviser considered the evidence on August 17, 2016 and noted that Dr. Seyoum's examination findings differed significantly than those of Dr. Hijazi. He recommended a second opinion examination, and OWCP referred appellant to Dr. Swartz for an impairment evaluation.

On October 18, 2016 Dr. Swartz noted that appellant experienced numbness of the hands at night and hand pain especially on the left radiating into her forearm. On examination he found slight numbness at the base of the thumbs with Tinel's testing and slight hypesthesias with pinwheel testing in the right little finger, with otherwise good sensation of the hands and digits. Dr. Swartz noted that an EMG and NCV performed July 31, 2007 showed sensory latency at the median nerve bilaterally and motor latency at the median nerve on the left side. Using Table 15-23, for the right side, he applied a grade modifier of 0 for test results, a grade modifier of 1 for a history of numbness at night, and a grade modifier of 1 for slight hypesthesia in the right little finger and thumb, which yielded an average modifier of 1 and a default value of two percent. For the left side, Dr. Swartz applied a grade modifier of 2 for tests findings of prolonged motor latency, a grade modifier of 1 for history, and a grade modifier of 0 for normal examination findings, which yielded an average modifier of 1 and a default impairment value of two percent. He found that the application of the *Quick*DASH score of 40 did not change the default value, and concluded that appellant had two percent permanent impairment of each upper extremity.

An OWCP medical adviser on November 22, 2016 concurred with Dr. Swartz' impairment rating, noting that his physical findings were similar to those of appellant's attending physician.

The Board finds that OWCP properly relied upon the opinion of Dr. Swartz in finding that appellant had no more than two percent permanent impairment of each upper extremity due to her accepted bilateral carpal tunnel syndrome.[13] Dr. Swartz provided detailed examination findings and appropriately applied the A.M.A., *Guides* to his clinical findings. He further provided rationale for his choice of grade modifiers. Dr. Swartz' opinion, consequently, represents the weight of the evidence and establishes that appellant has two percent permanent impairment of the right upper extremity and two percent permanent impairment of the left upper extremity.[14]

[12] *See A.R.*, Docket No. 15-1694 (issued February 9, 2016).

[13] *See M.P.*, Docket No. 17-0150 (issued June 21, 2017).

[14] *See H.S.*, Docket No. 16-1624 (issued January 13, 2017).

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has no more than two percent permanent impairment of each upper extremity for which she previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the August 31, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 2, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board